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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,325	09/12/2001	Colin Thomas Mallett	36-1500	4075
23117	7590	04/18/2005	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714				NGUYEN, HANH N
		ART UNIT		PAPER NUMBER
		2662		

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/936,325	MALETT ET AL.
	Examiner Hanh Nguyen	Art Unit 2662

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on Application filed on 09/12/01.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-5 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-5 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

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### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/8/02.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: a word “and” is missing after “said sender” on line 10.

It is not clearly stated whether “ a destination apparatus” on line 4 is referred to “a destination” on line 1. Examiner assumes they are identical. Appropriate clarification is required.

### ***Specification***

The disclosure is objected to because of the following informalities: it is not clearly stated whether “ a predetermined range” in claim 3 is disclosed in the specification. According to specification on page 7, lines 10-18, Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the

reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1 and 2 are rejected under 35 USC 102(e) as being anticipated by Wrede et al. ( Pat. 5,937,040).

In claims 1 and 2, Wrede et al. discloses a method of transmitting one or a plurality of textual messages (transmitting facsimile document from a fax server 50, fig.4) to a destination ( to a PC /telephone 12 as shown on fig.1) via a communications link ( ISDN link) comprising a signalling channel ( D- channel 56, fig.4) and one or more data channels ( B-channel 52, fig.4), , the signalling channel (D- channel 56, fig.4) being operable to establish and control connections between a source ( fax server 50, fig.4) and a destination apparatus ( PC or telephone 12 shown on fig.1) via the communications link so that data can be transferred between a source and destination via one or more of the data channels (see col.5, lines 15-30), said method comprising firstly establishing the number of messages to be transmitted and transmitting data representing the number (fig.6, block 74 shows a call from a soft telephone is established to the server 50); secondly identifying the sender of each message and transmitting data representing each said sender ( fig.6, block 76 identifies the caller by header information); and thirdly transmitting data representing the text of each message ( Fig.6, steps 80, 82, 84, in response to a selected message from the caller, the selected message is converted to character strings for transmission via D-channel to the caller). See col.5, line 65 to col.6, line 25.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4 are rejected under 35 USC 103(a) as being unpatentable over Wrede et al. (Pat. 5,937,040) in view of Haitsuka et al. (Pat.6,766,369 B1).

In claims 3 and 4, as explained in the parent claim 1, Wrede et al. further discloses the activity of the signalling channel is monitored ( fig.6 discloses at block 77 a step of monitoring the connection for the caller response on D channel 68, see col.6, lines 6-16). Wrede et al. does not disclose sending the data to the destination only if the signalling channel activity is within a predetermined range ( claim 3); and data is only sent within a predetermined time interval.

Examiner assumes that “signalling channel activity within a predetermined range” means “signaling channel activity is minimal” as disclosed in page 7 of specification. Haisuka et al. discloses, in fig.2, the schedule to transmit advertisement data (text messages) from OSP server 130 to client 100 include minimum number of times data sent to client 100 (signalling channel activity is within a predetermined range); time of day to send the data (data is only sent within a predetermined time interval). See col.7, lines 25-35. Therefore, it would have been obvious to one ordinary skilled in the art to apply the schedule of advertisement transmission of Haitsuka et al. into Wrede et al. in order to monitor the transmission in signaling channel between a source and a destination.

Claim 5 is rejected under 35 USC 103(a) as being unpatentable over Wrede et al. (Pat. 5,937,040) in view of Haitsuka et al. (Pat.6,766,369 B1), and further in view of Malik (pat. 6,081,841) .

In claim 5, Wrede et al. does not disclose an estimate the time for transmitting data to a destination via the signalling channel is made and, if the time exceeds a predetermined threshold, the data is transmitted to the destination using one or more of the data channels. Malik discloses an ISDN system, in Fig.5, wherein a source 101 requests for two B channels to transmit data message at expanded rate 128kbps to a destination 161 via ISDN switch 220 (transmitting messages on data channel). See Abstract. Even though neither Wrede et al. nor Malik disclose estimating whether the time to transmit data to a destination via signaling channel exceeds a predetermined threshold; however, estimating whether the time to transmit data to a destination via signaling channel exceeds a predetermined threshold is well-known in the art. Therefore, it would have been obvious to one ordinary skilled in the art combine the teaching of Malie with Wrede et al. in order to transmit data on B channel when the network connection is congested.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Markowitz (pat. 5,513,254) discloses Method and apparatus for processing facsimile transmissions.

Flake et al. (Pat. 6,584,114 B1) discloses Control of the change of telecommunications channels in a DECT-specific RLL/WILL partial System bound to an ISDN system.

Janky et al. (Pat. 6,549,942) discloses Enhanced delivery of audio data for portable playback.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hanh Nguyen whose telephone number is 571 272 3092. The examiner can normally be reached on Monday-Friday from 8AM to 5PM. The examiner can also be reached on alternate

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou, can be reached on 571 272 3088. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



HANH NGUYEN  
PRIMARY EXAMINER